

OPINION

This is an appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. The Defendant entered a plea of guilty to the Class D felony of forgery. Sentencing was left to the discretion of the trial court. That court imposed the minimum sentence of two years, with all but ten days suspended. The Defendant appeals, arguing that the trial judge erred in ordering her to serve any time in jail. We affirm the judgment of the trial court.

We will briefly address the underlying facts of the offense.

The Defendant and her roommate were behind on their rent. They both were employed by the same home exterminating company. The Defendant gave her landlord a forged check in the amount of two thousand, eight hundred dollars drawn on the account of one of the exterminating company's customers. Both the Defendant and her roommate had been inside the customer's home several times. The Defendant said that her roommate had given her the check and that she, the Defendant, had given the check to their landlord without even noticing on whose account it was drawn.

The trial court accepted the Defendant's guilty plea and sentenced her as a Range I standard offender to the minimum sentence of two years. The trial judge suspended all of her sentence except for ten days, which she was allowed to serve on weekends. The trial judge also ordered her to pay a fine, make restitution and perform public service work. The Defendant appeals the portion of the sentence that requires her to serve ten days.

When there is a challenge to the length, range or manner of service of a sentence, it is the duty of this court to conduct a de novo review with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The Sentencing Commission Comments provide that the burden is on the appellant to show the impropriety of the sentence.

Our review requires an analysis of (1) the evidence, if any, received at the trial and sentencing hearing; (2) the presentence report; (3) the principles of sentencing and the arguments of counsel relative to sentencing alternatives; (4) the nature and characteristics of the offense; (5) any mitigating or enhancing factors; (6) any statements made by the defendant in his own behalf; and (7) the defendant's potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-102, -103 and -210; State v. Smith, 735 S.W.2d 859, 863 (Tenn. Crim. App. 1987) .

The presentence report reflects the Defendant was thirty-eight years old and had obtained her GED. A few months prior to her conviction herein, she was convicted upon a plea of guilty of a misdemeanor worthless check offense in Davidson County. At the time of sentencing herein, she was attempting to reopen the prior worthless check prosecution. Several years earlier, she had been charged with a check law violation but was not convicted. She admitted to experimenting with marijuana when she was a teenager. She apparently had a fairly steady employment history.

In sentencing the Defendant, the trial judge found as a mitigating factor that her conduct neither caused or threatened serious bodily injury. The court further found as an enhancement factor the Defendant's previous history of criminal convictions or

criminal behavior in addition to that necessary to establish her range. The court then determined that the appropriate sentence would be the presumptive minimum of two years. The court further determined that the Defendant was a favorable candidate for an alternative sentencing option and suspended all but ten days of her sentence which was allowed to be served on weekends in the local workhouse.

On this appeal, the Defendant does not take issue with the length of her sentence, because she was given the minimum length of sentence authorized for her crime. She argues in general terms that the trial judge erred or abused her discretion by ordering her to serve any time in jail.

The record in this case affirmatively shows that the trial court considered the sentencing principles and all relevant facts and circumstances. This court should not place trial judges in a judicial straight-jacket in the area of sentencing, and we should exercise restraint in interfering with their traditional discretionary powers. State v. Ashby, 823 S.W.2d 166, 171 (Tenn. 1991). After a careful review of this record, we cannot conclude that the trial judge erred or abused her discretion in sentencing this Defendant.

The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

GARY R. WADE, JUDGE

ROBERT E. CORLEW, III, SPECIAL JUDGE